

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 18, 2003

Agenda ID #2990 & ID #2991

Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 02-12-027, et al.

These are the draft decisions of the Administrative Law Judge (ALJ) Division. The ALJ Division is presenting two options for the Commission's consideration they will not appear on the Commission's agenda for at least 30 days after the date they mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decisions, it may adopt all or part of them as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the alternate draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3, opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG: mnt

Attachment

Decision **DRAFT DECISION OF ALJ DIVISION** (Mailed 11/18/03)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Gas Company for authority to update its gas revenue requirement and base rates. (U 904 G)	Application 02-12-027 (Filed December 20, 2002)
Application of San Diego Gas & Electric Company for authority to update its gas and electric revenue requirement and base rates. (U 902 M)	Application 02-12-028 (Filed December 20, 2002)
Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.	Investigation 03-03-016 (Filed March 13, 2003)

**DECISION GRANTING LOCAL 483 UTILITY WORKERS UNION OF AMERICA
ELIGIBILITY FOR INTERVENOR COMPENSATION****Summary**

This decision makes a preliminary determination of eligibility as requested in the Notice of Intent (Notice) filed by Local 483 Utility Workers Union of America (Local 483) on March 29, 2003 and the Amended Notice filed on

May 20, 2003 pursuant to Pub. Util. Code § 1804(b)(1).¹ Local 483 is eligible to request compensation in this proceeding because it meets the statutory definition of “customer,” Pub. Util. Code section 1802(b), and demonstrates a significant financial hardship, Pub. Util. Code section 1802(g). The preliminary determination of eligibility does not assure that an award of compensation will be forthcoming at the conclusion of the proceeding. Pub. Util. Code section 1804(b)(2). Local 483 must make a substantial contribution to the Commission’s decision in order to receive a reward, Pub. Util. Code section 1803, and must provide adequate documentation as specified later in this order.

The intervenor compensation statute requires the Commission to award reasonable compensation for costs of participation to a “customer” (1) who makes a substantial contribution and (2) whose participation without an award of compensation would impose a significant financial hardship. Pub. Util. Code section 1803. In *In the Matter of the Commission’s Intervenor Compensation Program*, (1998), 79 CPUC 2d 628 (hereafter *Intervenor Compensation Order*) we suggested that questions about a participant’s status as a customer should be addressed at the “Notice of Intent stage” of the proceeding in which compensation would be sought, which typically occurs around the time of the Prehearing Conference. 79 CPUC 2d 628, 649. We follow that timetable here, although due to the importance of the issue we issue a Commission decision at this early stage.

Timeliness of Filing Notice for Intervenor Compensation

Under § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve

¹ All statutory references are to the Public Utilities Code.

on all parties to the proceeding a notice of intent to claim compensation.” A first Prehearing Conference (PHC-1) was held in San Francisco, California, on February 7, 2003². At that time the parties were unable to provide sufficient information on the availability of expert staff to allow the ALJ to set a schedule. Further, parties had not sufficiently reviewed the applications to provide an informed view of the issues to be litigated in these consolidated proceedings. A second prehearing conference (PHC-2) was held on March 14, 2003. Local 483’s Notice was filed fifteen days later. Therefore, Local 483’s Notice is timely filed under § 1804(a)(1).

Statutory Definition of a Customer

The term “customer” is defined in Pub. Util. Code § 1802(b):

(b) "Customer" means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, but does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was Established or formed by a local government entity for the purpose of participating in a commission proceeding.

There are three distinct concepts within this definition:

- (i) a participant representing consumers, or

² Local 483 filed a petition to intervene in these proceedings on February 18, 2003 after PHC-1. It was placed on the consolidated service list as an interested party at PHC-1.

- (ii) a representative specifically authorized by a customer, or
- (iii) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.

The Commission requires a participant to specifically identify in its Notice how it meets the definition of customer and, if it is a group or an organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. *Intervenor Compensation Order* at 649. A rebuttable presumption of eligibility does not exist for Local 483 because Local 483 has not previously filed for eligibility for intervenor compensation. Pub. Util. Code section 1804(b)(1)

The Commission has for many years adopted an expansive approach to customer status determinations, utilizing various presumptions and assumptions in favor of associations and organizations that advance the public interest directly but represent narrowly defined ratepayer interests only indirectly. Environmental groups, including groups without voting members, have been found eligible because of an “understanding” that they “represent customers who have a concern for the environment.” *Intervenor Compensation Order* at 688 (footnote 14); *Natural Resources Defense Council*, (1988), 28 CPUC 2d 101 (D.88-04-066). Similarly, the Commission has consistently awarded compensation to Cal/Neva, “an association of community action agencies and community based organizations representing low income interests,” *Intervenor Compensation Order* at 688, fn. 14 , even though the participation of government agencies might have disqualified it under other circumstances. Compare, *Intervenor Compensation Order* at 645-46. These decisions represent a recognition that the “interests of

customers” are broad enough to encompass related issues of public health and welfare, environmental quality, and distributive justice.

This expansive approach is fully consistent with the intent of AB 1975 (Moore) (Ch. 942 Stats. 1992) which added section 1801.3(b) to the intervenor compensation article of the Public Utilities Code:

1801.3. It is the intent of the Legislature that:

...

- (b) The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

....

We next turn to the question of whether a labor organization such as Local 483 is a customer within the meaning of one or more of the three categories identified above, consistent with the Commission’s approach to other types of public interest organizations.

The Commission’s public interest charge pursuant to Pub. Util. Code section 451 includes a requirement affirmatively to promote the well-being of utility employees and the public through the provision of adequate service and facilities:

451....

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

...

The Legislature in enacting the Public Utilities Act recognized that in the area of adequacy of service and facilities consumers and employees share common interests. Employees and their union representatives have access to information and points of view that may be invisible to customers, but which are crucial both to customers' well-being and to this Commission's ability to discharge its statutory responsibility to assure adequate service and facilities.³ Unions representing utility employees may therefore be "customers" if they are the proponents of positions and issues that affect adequacy or quality of service, under the established precedents of the Commission, even if they do not advance "traditional" consumer positions regarding control of cost and rate levels. Of course, where they do advance rate and cost-related issues on behalf of their members as consumers or consumers generally, they are eligible as "customers" without more justification.

Local 483's Claim as a Customer

On the first page of both its Notice and Amended Notice, Local 483 states that it believes it qualifies as a customer pursuant to § 1802(b) "as a 'participant representing consumers'" (category (i), above). According to its Notice and Amended Notice, Local 483 is a non-profit labor organization with approximately 250 members. Local 483 does not assert that it is an actual customer of either utility; however, it is undisputed that among Local 483's members are residential customers of Southern California Gas Company and San Diego Gas & Electric Company. Local 483 is a "self-appointed representative" in the sense that its participation on behalf of its members as customers may

³ C.f., Pub. Util. Code sections 761 and 762.

represent more than the “narrow self-interest of its members as consumers.”

Intervenor Compensation Order at 648. In this sense it may be a participant representing consumers generally under category (i).

Further, as it asserts, Local 483 is a non-profit labor organization with 250 members who pay monthly dues. Local 483’s “Constitution”⁴ states in Article I, Section A, that it has “jurisdiction over those employees of Pacific Enterprises who, by agreement, certification or other means it is authorized to represent.” The Objectives of Local 483, according to Article II of its Local Constitution, are:

Section A

To protect, maintain and advance the interests of the workers, to improve working conditions, and to secure adequate remuneration for its members.

Section B

To secure equal pay for equal work, regardless of race, creed, color, sex, age, or national origin.

Section C

To extend unionism on the basis of industrial organization; to secure legislation in the interest of all working people; to promote recognition and acceptance of true collective bargaining in industry, and to increase public understanding and support of the labor movement.

Thus, Local 483’s authority to act on behalf of its members in a regulatory setting is also pursuant to the specific express agreement or authorization of its members who are residential customers, category (ii) above.

⁴ See Local 483’s “Constitution” at: <http://home.inreach.com/uwua483/bylaws.htm>. Local 483 did not serve copies of its articles of incorporation or by-laws in this proceeding on other parties. Although entitled “Constitution” the document’s internet link describes it as “bylaws.”

Local 483 may also show that its members want, authorize and expect ratepayer representation in addition to labor-related representation, under category (iii). A category (iii) customer is “a formally organized group (with articles of incorporation and/or bylaws) authorized to represent the views [sic] of residential customers”. *Intervenor Compensation Order* at 648.⁵ Local 483 is a local union member of the Utility Workers Union of America (UWUA). The Constitution of the UWUA expressly provides for regulatory and other forms of advocacy on behalf of its members and other working people. The Preamble states in part:

“The Utility Workers Union of America, AFL-CIO is an organization of members united by the belief in the dignity and worth of workers, by the value of the services we provide to the public and dedicated to improving the lives of our members and their families.

We are an organization of men and women of every race, religion, age, and ethnicity, who are committed to a society where all workers and their families live and work with dignity; where there is an economic and political mandate for a more equitable distribution of the nation’s wealth for all those performing useful service to society; where workers have a collective voice and power at the workplace; where economic well being is achieved for our members and all workers; where work is satisfying and fairly rewarded.

To accomplish these goals, we commit to:

⁵ The statute uses the term “interests” not “views.” Pub. Util. Code section 1802(b). The misstatement in the *Intervenor Compensation Order* should not be understood to render category (iii) merely a vehicle for expression of subjective opinions. Rather, it permits organizations to put forward positions that objectively advance customer interests in costs, rates, service delivery, service quality, etc.

...

- Stay united and recognize our common ground and goals and not be divided by forces of discrimination, corporate action or disharmony;
- Participate in our democratic society and insure that unions maintain a vital and central role in the political, social and economic life of our country;
- Work for social and economic justice;
- Leave the workplace a better place for our children and our children's children. “

As discussed above, the Commission has a long-established practice of finding organizations eligible under category (iii) who are presumed by the Commission to promote broad public interests. The Commission's objective in providing intervenor compensation is to provide for as broad a platform as possible for consumers to have meaningful input into our complex regulatory processes. Working for social and economic justice is a very generalized objective but at the heart of our decisions we must make a finding that the rates and rules we adopt are just and reasonable, concepts that are closely aligned with social and economic justice. We find that within the scope of Local 483's Constitution and the Constitution of the national UWUA its members may expect the union to represent them broadly, including representation before the Commission.

Further, Local 483 can establish that it satisfies the intended purpose of ratepayer representative compensation as set forth in § 1801.3 (b):

“The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.” (Emphasis added.)

Clearly Local 483 has “a stake” in the regulatory process. That stake potentially has two dimensions. One dimension is the interest of the employee members of Local 483 who may wish to ensure continuity of employment; safe working conditions and appropriate wages; and increased staffing levels, which would mean a larger membership base for the union as well as a sustained level and quality of service for customers. *Article II – Objectives: Section A* of Local 483’s Constitution states that it is to “protect, maintain and advance the interests of the workers, to improve working conditions, and to secure adequate remuneration.” These goals may be consistent with or in conflict with the interests of ratepayers as matters unfold in public utility regulatory proceedings.

In Article II – Objectives, Section C, of its Constitution, Local 483 is empowered to “to secure legislation in the interest of all working people”. Local 483 interprets this to extend to regulatory processes as well.⁶ Article XV – Standing Committee, allows Local 483 to form special purpose, limited-life committees for legislative matters. In the National Union’s Constitution, it states that the union is committed to “(w)ork for social and economic justice.”⁷ Local 483’s actions are subordinated to the National Union’s Constitution and so we may also look to the National Union for guidance on the role of the local affiliate. The clear set of social and economic justice objectives of the national union are sufficient to negate any inference that Local 483’s activities in this case will be contrary to the interests of customers for purposes of intervenor compensation eligibility.

⁶ Electronic communication to the assigned ALJ, April 11, 2003.

⁷ <http://www.uwua.org/newpage8.htm>

At the eligibility stage of the intervenor compensation program we will make no final determination, but we will not foreclose compensation by a finding of ineligibility. Rather, as a matter of both law and policy the “customer status” of a labor organization like Local 483 representing utility employees, and thus eligibility for intervenor compensation, will be presumed, subject to subsequent final determinations by the Commission in a particular case where the union’s participation is clearly objectively contrary to the interests of customers. This is consistent with our approach to eligibility in the environmental and low income areas, as discussed above.

Significant Financial Hardship

As discussed above, Local 483 may be eligible under any of the three categories of “customer” identified by section 1802(b). In the *Intervenor Compensation Order* we articulated a bifurcated approach to “financial hardship.”⁸ Entities seeking eligibility under categories (i) and (ii) – participants representing consumers generally and representatives expressly authorized to represent a consumer or group of consumers, respectively – must meet a “cannot afford to pay” standard. This standard requires a customer to provide detailed financial information, under seal, for Commission review. Local 483 has not made such a showing.

Entities seeking eligibility pursuant to category (iii) – an organization authorized by its by-laws – may utilize a “comparison” test, in which the cost of participation is compared to the economic interest of the individual members of the organization. Local 483 has made a hardship claim more appropriate to

⁸ *Intervenor Compensation Order* at 650-53.

customer status under category (iii): a representative of a group or an organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The proposed budget for participation described below is several orders of magnitude larger than the annual costs for an average residential ratepayer of SDG&E or SoCal Gas. Since Local 483 is acting as a representative of its members in their capacities as residential ratepayers, this is a sufficient showing to establish financial hardship under section 1802(g). We will not require any further detail of individual members' utility bills.

Scope of Proposed Participation

Section 1804(a)(2)(A)(i) requires Notices to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Local 483 indicates in its amended notice that it intends to be particularly interested in the level of service to ratepayers provided by the Transmission and Storage Divisions of SoCalGas, and that it has a concern with safe levels of service affected by such factors as possible reductions in equipment and facility maintenance, overlapping use of contractors and "regular" employees. Additionally, Local 483 asserts that it will be active on most issues including incentive mechanisms (which is deferred to phase II).

Proposed Budget

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Local 483 significantly modified its budget when it amended its Notice, as shown in the table below.

Itemized Estimated Budget for Local 483

	Hours	Original Rate	Revised Rate	Original Estimate	Revised Estimate

Dennis Zukowski	150	\$32	\$150	\$4,800	\$22,500
Roy Bozarth	150	\$32	\$150	\$4,800	\$22,500
Consulting Expenses				\$2,000	\$20,000
Other				\$4,000	\$4,000
Total				\$15,600	\$69,000

Local 483 has not made a showing to justify the hourly rates for Zukowski or Bozarth, nor for the costs of consultants, and so we put it on notice that any request for compensation must address the reasonableness of all costs. The presentation of their estimate should in no way whatsoever be construed as a finding on its reasonableness of scope, hourly compensation rates, or recoverability of the various costs.

Comments on Draft Decision

The draft decision of the ALJ Division in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in these proceedings.

Findings of Fact

1. Local 483 is a non-profit labor organization whose members include customers of SDG&E and SoCal Gas.
2. The purpose of Local 483 is to protect, maintain and advance the interests of the workers, to improve working conditions, and to secure adequate

remuneration for its members; to secure equal pay for equal work, regardless of race, creed, color, sex, age, or national origin; to extend unionism on the basis of industrial organization; to secure legislation in the interest of all working people; to promote recognition and acceptance of true collective bargaining in industry, and to increase public understanding and support of the labor movement, consistent with the provisions of the Constitution of the Utility Workers Union of America.

3. The Utility Workers Union of America is an organization of members who commit to, among other things:

- Stay united and recognize our common ground and goals and not be divided by forces of discrimination, corporate action or disharmony;
- Participate in our democratic society and insure that unions maintain a vital and central role in the political, social and economic life of our country;
- Work for social and economic justice;
- Leave the workplace a better place for our children and our children's children.

4. Local 483, under its Constitution, has jurisdiction over those employees of Pacific Enterprises who, by agreement, certification or other means it is authorized to represent.

5. Local 483 is a participant representing consumers, as defined in § 1802(b) in category (i).

6. Local 483 is a representative authorized by a customer, as defined in § 1802(b) in category (ii).

7. Local 483 is organized to, or authorized by its constitution, to represent its members as residential ratepayers, as defined in § 1802(b) in category (iii).

8. Local 483 has not yet made a showing to justify its expense estimate.

Conclusion of Law

Local 483 is a customer as defined under § 1802 (b) and therefore it is eligible for intervenor compensation.

IT IS ORDERED that:

Local 483 Utility Workers Union of America (Local 483) has met the eligibility requirements of Pub. Util. Code § 1804(a), and it will be eligible to request compensation for its participation in this proceeding.

This order is effective today.

Dated _____, at San Francisco, California.